

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE  
SIXTH JUDICIAL DISTRICT AT KNOXVILLE

STATE OF TENNESSEE,

Plaintiff,

v.

No. 169384-2

PAYTON ABERNATHY, individually and  
d/b/a PEYTON ENTERPRISES, d/b/a  
www. MAKE MONEY STUFFING.COM,  
d/b/a/ GLOBAL MAIL MARKETING,  
d/b/a AMERICAN MAIL MARKETING,  
d/b/a PC ENTERPRISES, d/b/a FREEDOM  
MARKETING, d/b/a www.mailingprogram.com  
and KEVIN SPARKS, individually,  
individually and in a representative capacity,  
of all other Defendants,

Defendants.

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**STATE OF TENNESSEE'S MOTION FOR TEMPORARY INJUNCTION,  
APPOINTMENT OF A RECEIVER, ASSET FREEZE, AND TEMPORARY  
REVOCATION OF BUSINESS LICENSES**

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Comes now the State of Tennessee, through its Attorney General & Reporter, Robert E. Cooper, Jr., and moves this Court for a statutory temporary injunction, for good cause shown and in the public interest, pursuant to Tenn. Code Ann. § 47-18-108(a)(1), (4), (5), (b)(1), (2) and Tenn. R. Civ. P. 65. As grounds for the State's motion for a temporary injunction, Plaintiff would show the Court as follows: (1) This Court has express statutory authority to issue a statutory temporary injunction, to appoint a receiver, to order an asset freeze and to temporarily revoke Freedom Marketing's license to do business in Tennessee, against Defendants under Tenn. Code Ann. § 47-18-108(a)(1), (4), (5), and (b)(1), (2) which complement Tenn. R. Civ. P. 65 and Tenn. R. Civ. P. 66. Under Tenn. Code Ann. § 47-18-108(a)(4), the courts are authorized to issue orders which restrain and prevent violations of the Tennessee Consumer Protection Act,

without bond. While the Legislature does not require the State to prove irreparable injury or inadequate legal remedy in consumer protection cases, both are evidenced in this case by the Complaint, its supporting affidavits and documents and the supporting affidavits and documents attached as exhibits to this Motion; (2) Defendants have systematically violated this State's consumer protection laws. Defendants' violations are knowing and persistent. Defendants must be enjoined from their continuing, systematic, unfair and deceptive practices which violate numerous provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 48-18-101 *et seq.*, related statutes and applicable law; (3) The public has suffered and will continue to suffer harm unless this Court orders the temporary relief requested in the public interest. Defendants' unlawful envelope stuffing scheme with its unlawful chain referral plan, operates and has operated out of Knoxville, Tennessee. Defendants have evaded- or at least delayed - justice by using no fewer than seven names, no fewer than six mail drop offs-five in Tennessee and one in Chicago, having no physical address shown on their documents or brochures and no working telephone numbers available to consumer victims. The facts set forth in the Complaint are incorporated by reference as if set forth fully herein. However, a thumbnail sketch of the Defendants' unlawful scheme follows.

Defendants' unfair and deceptive conduct begins with false advertisements in classified ads or on the Internet, and continues through their unlawful chain marketing scheme and misleading circulars. At least 236 consumers, from all over the country, have complained to various consumer agencies, beginning in 2001 and continuing through 2007. As an aid to the Court, charts summarizing consumer complaints are attached as Collective Exhibit 1 to this Motion, pursuant to Tenn. R. Evid. 1006. Consumer victims have filed complaints with the Better Business Bureau (142 complaints), the Division of Consumer Affairs (8 complaints), this

Office (13 complaints), the federal government (36 complaints) and with other Attorneys General in the consumers' home state (5 complaints). Defendants, located and operating out of Knoxville, TN, have effected an unlawful scheme and continue to effect a scheme which is national in scope. The scheme continues today. Consumer Charlotte Belcher filed a complaint with the federal government on January 25, 2007.

In spite of Defendants' receipt of requests for refunds from consumers, in spite of Defendants' receipt of complaints from the Better Business Bureau ("BBB") and complaints from the Division of Consumer Affairs, Defendants' unlawful scheme continues. (See Affidavit of Jeannie Hoskins, BBB Director, attached hereto as Exhibit 2 and Affidavit of Mary Clement, Director of Division of Consumer Affairs ("DCA"), Exhibit 2 to Complaint). The attached consumer affidavits, Collective Exhibit 3, evidence not only how the Defendants misrepresent their "business opportunity" but evidence the "disappearing act" played by Defendants after receiving the consumers' money.

Rarely could consumers reach anyone at any of the e-mail or contact addresses provided in Defendants' ads. When consumers wrote letters to the alleged company, at the private mail box drop where they had sent their money, Defendants failed to respond at all. (See consumer affidavits attached as Collective Exhibit 3). However, at least one consumer, Mary Catlett, was able to find someone speaking for Peyton Enterprises after sending her money and receiving the "business package," (or "Plan"). Ms. Catlett realized that if she followed the Defendants' business plan, she would be making the same false representations and would be continuing a "chain letter" deception. Further, she would not be making much money, if any, but would have to spend more. Ms. Catlett requested a refund. But Peyton Enterprises refused her request, saying that it did not give refunds, that she (and other consumers) could make money. A copy of

the Defendants' "business package" or "Plan" is attached as Exhibit 4. (See Affidavit of Mary Catlett, attached hereto as Exhibit 5 at ¶ 5). Another consumer, Jennifer Jones, hoping to find work at home part-time to supplement her income from her regular job, sent Peyton Enterprises/Global Mail Marketing \$29.95 through PayPal in order to receive the business package. After sending her money, then receiving the "business package" ("Plan"), she, too, learned that in order to make any money at all, she would have to do the following: recruit people, make the same false representations as Defendants had made to her, that she would have to mail envelopes to people she knew, then send Defendants' circulars to those who had returned a S.A.S.E., and that her contacts, in turn, would have to do the same, mailing envelopes then circulars, to people they knew who would continue the chain. (Affidavit of Jennifer Jones, attached hereto as Exhibit 6). This so-called "business package" which she had been required to buy was not what Defendants advertised and not what she ordered. Consumers did not receive what they ordered and were guaranteed - a work- at- home business which would earn them thousands. See Affidavits of Shirla Ghadaki, Mamie L. Ellis, Alice Obuso, Denise Deal, Angela Kuscsik, Nancy Mills, Joan Margaret Klink, attached hereto as Collective Exhibit 3, Affidavits of Mary Catlett (Exhibit 5 ) and Jennifer Jones (Exhibit 6) and other consumers who have complained about Defendants' deceptions. (See charts listing other consumer complainants, Collective Exhibit 1; for chart authentication, see Exhibit 8, Affidavit of Suzanne Linden).

Defendant Abernathy, individually and by and through the other named Defendants, makes utterly false guarantees that consumers can make thousands of dollars stuffing envelopes, at home, weekly. (See copy of Defendants' web sites: Make Money Stuffing, Global Mail Marketing and Freedom Marketing, attached as Collective Exhibit 6 to Complaint). Defendants also use the print medium for their false advertisements guaranteeing consumers thousands of

dollars for stuffing envelopes at home; if a consumer responds to the Defendants' misleading classified ad claiming the consumer can earn up to \$2500 per week, he/she is given the Internet web site address of Freedom Marketing or, instead, the consumer can send a S.A.S.E. to the Chicago mail box drop address. (See copy of classified ad, Exhibit A to Affidavit of Shirla Ghadaki, Collective Exhibit 3). If the consumer chooses the second alternative, Defendants send the consumer a misleading circular which mirrors the web site's false and misleading guarantee and which requests the required registration fee to purchase the required "business package." A copy of the misleading circular is attached hereto as Exhibit 7. After receiving the required "registration fee" from consumers who have been guaranteed thousands of dollars weekly, the Defendants vanish. Some consumers do receive the solicitation to participate in Defendants' unlawful chain marketing plan, through the mail. A copy of the Plan ("business package") is attached hereto as Exhibit 4. But when consumers seek refunds, they either learn that no refunds are given (Mary Catlett, Exhibit 5) or learn that no Defendants can be found. None of the consumer affiants has been able to obtain a refund.

Defendants' unlawful scheme, while broad in scope and reach, remains local in genesis and operation. Affidavits of Shirla Ghadaki (Collective Exhibit 3) and Angela Kuscsik (Collective Exhibit 3) establish that money unlawfully obtained from consumers who respond to Defendants' false ads is deposited in Knoxville area banks. *e.g.*, Home Federal Bank of Tennessee. Exhibit C to the Affidavit of Shirla Ghadaki evidences the back of her cashed/deposited check by Freedom Marketing; Ms. Ghadaki's Exhibit B to her Affidavit, her bank statement, evidences that her payment of \$19.95 went to PC Enterprises; additionally, the bank statement contains Mr. Abernathy's personal Sprint cell phone number, (865) 300-4317; Consumer Angela Kuscsik testifies that her check to PC Enterprises was cashed at Home Federal

Bank in Tennessee. (Collective Exhibit 3, Affidavit of Angela Kuscsik at p.2).

Defendants retain their ill-gotten gains despite consumers' efforts to obtain "guaranteed" refunds, despite the Better Business Bureau's ("BBB") efforts to contact Defendants and despite efforts of the State of Tennessee Division of Consumer Affairs. See Affidavit of Jeanie Hoskins, BBB Director, attached hereto as Exhibit 2 and Affidavit of Joyce Hughey, Consumer Specialist at the Tennessee Division of Consumer Affairs, attached hereto as Exhibit 11. The affidavits of consumer victims, Shirla Ghadaki, Mamie L. Ellis, Alice Obuso, Denise Deal, Angela Kuscsik, Nancy Mills, Joan Margaret Klink (Collective Exhibit 3) evidence not only how the Defendants misrepresented their "business opportunity" as a guaranteed way to make thousands of dollars working at home, but also evidence the effective disappearance of Defendants after they obtain the consumers' "registration fee." Even if consumers receive the "business package" - the unlawful chain referral marketing plan- those who seek a refund cannot locate the Defendants. (Affidavit of Jennifer Jones (Exhibit 6)).

Defendants, under the many names they have used for the same unlawful scheme, failed and continue to fail to provide what they promoted and guaranteed- the opportunity to make thousands of dollars weekly stuffing envelopes. Numerous consumers received absolutely nothing. The consumers' money disappeared just as the Defendants disappeared. Defendants did not respond to the consumers' e-mails, to their certified letters or to any messages left on the "consumer contact" phone number (865) 300-4317 - Mr. Abernathy's personal Sprint phone number. Since that number was disabled in 2004, consumers calling it to request a refund are told it is not a working number. Until then, that number was a voice mail contact number; but calls were not returned. Nor were consumers' requests for refunds acknowledged, when sent to the email addresses provided by Defendants or when sent to the mail drops where consumers had

sent their money. After Defendants receive the consumers' registration money, or, in some instances, after the Defendants send them the unfair and deceptive "business package," Defendants disappear.

Even though Mr. Abernathy's private number was disabled in 2004, it has continued to be shown as a contact number for consumers. In August 2004, Alice Obuso, of Fayette County Kentucky, sent her registration fee to 234 Morrell Road # 311, Knoxville, TN but received nothing. She tried to contact PC Enterprises about the status of her order but the phone number she had for the company, (Mr. Abernathy's personal Sprint cell phone number), was not a working number. (Collective Exhibit 3, Affidavit of Alice Obuso). The consumers' checks, however, would be cashed by PC Enterprises, showing the non-working telephone number. Consumer checks were, at times, cashed or deposited at Home Federal Bank of Tennessee. (See Exhibits B and C to Affidavit of Shirla Ghadaki, Collective Exhibit 3). Basically, communication ended and continues to end after Defendants get their money through their unfair and deceptive promotions.

No telephone listings exist for any of the named companies. (Affidavit of Suzanne Linden, paralegal in this Office, attached as Exhibit 8). There is no telephone listing for Payton Abernathy either; while his address is 855 Paxton Drive, Knoxville, TN 37918, his house has no number on it. It is the only house between House Nos. 849 and 861 on Paxton Drive in Knoxville, TN. Ms. Linden took a picture of the house where Mr. Abernathy and his wife reside. There is no street number to be seen on the house that Mr. Abernathy is renting, the house between 849 Paxton Drive and 861 Paxton Drive. (Affidavit of Suzanne Linden, Exhibit 8). The affidavits of consumers Shirla Ghadaki, Mamie L. Ellis, Alice Obosu, Denise Deal, Angela Kuscsik and Nancy Mills (attached as Collective Exhibit 3) and Jennifer Jones (Exhibit 6)

evidence not only the unlawful, deceptive misrepresentations but also Defendants' disappearance - after Defendants get the consumers' money. Failure by Defendants to provide refunds contradicts their ads. For example at page 3 of their web site, "Make Money Stuffing Envelopes," Defendants represented that the consumer could pay PayPal.com by credit card and Echeck. The Defendants state that "PayPal is FDIC insured, and we are verified members. 'Verified' means that *if we do not ship your product, your refund is guaranteed.*" (Exhibit 9). Not only did the Defendants *guarantee* the making of thousands of dollars, they *guaranteed* a refund if the consumer did not receive their "business package."

Defendants mislead and deceive consumers, take consumers' money, keep the money and disappear from view. Other than the post office boxes (mail drops), consumers have no way to communicate with the Defendants because no physical address and no working phone numbers are provided by Defendants to consumers. The Defendants failed and continue to fail to respond in any way to consumers' requests for refunds of their registration fees. (Collective Exhibit 3). Defendants disregard the law and their consumer victims.

The Complaint, its supporting exhibits and documents, and the exhibits attached to this Motion demonstrate not only the irreparable injury to the public which will continue to occur without the extraordinary relief requested but provide evidence of the likelihood of success on the merits of this claim by the State of Tennessee.

Defendants' unlawful scheme continues today. "Freedom Marketing," the most recent name chosen by the Defendants as their vehicle for misrepresentations, false advertising and unlawful operation, continues to receive money wrongfully obtained and to charge consumer credit cards. (See Affidavit of Suzanne Linden, Exhibit 10).

The total number of consumer victims of Defendants is unknown to the State. However,



by preservation of Defendants' records and assets through the requested temporary injunction order, asset freeze and appointment of a receiver, the identity of additional victims, the monetary losses suffered by each consumer, may be collectible and any future harm to consumers prevented. Further, the identification and location of all entities with knowledge of Defendants' unlawful activities may be ascertained. The Defendants have, by their actions and inactions, demonstrated, at the very least, their continuing disregard for the public interest and arrogant disregard for the law.

The integrity of the commerce of this State and the interests of the public suffer each day that Defendants reap the benefit of their, unlawful, unfair and deceptive trade practices. While it is unnecessary for the State to have to prove immediate and irreparable injury to the public interest, the evidence adduced demonstrates that immediate and irreparable injury to the public interest and to individual consumers will result if the Defendants are not enjoined as outlined below, a receiver appointed, assets frozen and the Tennessee business license of Freedom Marketing revoked. The relief sought by this Motion is detailed in the proposed Order submitted contemporaneously with the filing of this Motion. The Defendants have violated and are violating the Tennessee Consumer Protection Act as set forth in the Complaint and evidenced by supporting affidavits and documents. Defendants have engaged, are engaging and are about to engage in unfair and deceptive acts and practices, as required for the relief requested.

The statutory temporary injunction order sought by the Attorney General & Reporter, against Defendants and any agents, servants, employees, successors, assigns, attorneys and any and all persons or entities in active concert or participation with Defendants who will receive notice of this Order by whatever means, would enjoin them, each individually and in any representative capacity from directly or indirectly:

- (A) Soliciting, promoting , or otherwise marketing any work-at-home business to the public to make money by stuffing envelopes or by any means whatsoever, in any medium;
- (B) Continuing any aspect of a work-at-home operation with existing persons, if any. “ ‘Person’ means a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.” Tenn. Code Ann. § 47-18-103 (9).
- (C) Transferring any money or thing of value taken, held or obtained from any consumer or person to any person or entity except the court appointed receiver, if the money or thing of value constitutes proceeds resulting from the promotion, advertisement, operation, participation in and/or solicitation, directly or indirectly of consumers in Defendants’ envelope stuffing schemes, including but not limited to Peyton Enterprises, PC Enterprises, Global Mail Marketing, American Mail Marketing, Make Money Stuffing Envelopes, Freedom Marketing, withdrawing or taking funds, money or property from any account, or any bank or financial institutions or Defendants’ post office boxes without approval of the Court, if such account and/or mail may contain funds obtained through the unlawful, unfair and deceptive operation of Defendants’ envelope stuffing schemes, transferring any property or anything of value from 855 Paxton Drive, Knoxville, Tennessee 37918 or any other location leased or owned by Defendants, transferring money or anything of value into a different account, under any name, real or fictitious.
- (D) Destroying, damaging, altering, or removing from this the State of Tennessee any and all documents. “Documents” means all written material, however produced or reproduced and wherever located, owned, possessed, controlled, in the custody of or accessible to you or your agents, officers and/or businesses, constructively or otherwise, and whether prepared or received by you, your agents, officer, businesses, letters, correspondence, e-mail, certificates, newspapers, logs, journals, accounts, schedules, contracts, prospectuses, marketing and advertising materials, agreements, drafts, reports, memoranda (including memoranda or notes of telephone conversations, other conversations, discussions, meetings, or conferences), telegrams, telexes, photographs, books, transcripts, records, computer databases, electronic and written, business records of any kind, pamphlets, office communications

(inter-office and intra-office), bulletins, manuals, minutes, marketing studies, statements, notebooks, forms, notices, tabulations, analyses, studies, microfilms, voice recordings, videotapes, tables or statistical or other data, notes or other tangible things, including copies if the copy bears any other marking or notation of any kind and each such document shall include all attachments, enclosures, and materials underlying, supporting or used in the preparation of any such document, and other documents that relate or refer to each such document, notes, names and addresses of consumers responding to Defendants' advertisements, Defendants' bank statements, financial statements, revenue journals, cash journals, any financial records, concerning Defendants wherever located;

- (E) Deleting any information or documents which are computerized, or in any way, damaging any computer, Defendants' use or used for personal or business, to render it useless;
- (F) Selling, leasing, or distributing to any person any of Defendants' consumer lists;
- (G) Engaging in or promoting any unlawful business opportunity, including any such business not owned by Defendants;
- (H) Further, the State seeks to have the Court preserve the status quo by freezing all Defendants' assets, real or personal, including but not limited to any bank accounts at Home Federal Bank of Tennessee or any other bank account, at any other bank or financial institution, investment to which Defendant Abernathy has access, withdrawing no money without the permission of the Court in order to preserve funds for restitution for consumers;
- (I) Appoint a receiver to preserve the status quo, to take control of all accounts, records and collect all assets of Defendants and to take control of Defendants' mail *i.e.*, Defendants can pick up their mail only in the company of the Receiver and shall open same in presence of Receiver. Receiver shall take control of any mail relative to Defendants' scheme or bank accounts or other assets.
- (J) That Defendants shall abide by all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101- 125 and related statutes, including but not limited to, Tenn. Code Ann. §§ 47-18-104(a), (b)(2), (3), (4), (5), (9), (12),(18),(19) and (27).

- (K) Enjoin Defendants from leaving Knox County, Tennessee during the pendency of this case without prior permission from the Court.
- (L) Temporarily revoke Defendants' license to do business in Tennessee (Freedom Marketing is the only entity known to have a license) and to the extent there may be other business licenses engaged whereby Defendants are engaging in unfair and deceptive practices, to temporarily revoke those licenses.

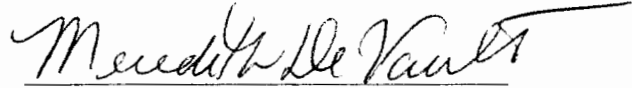
In support of this Motion, the State relies on the following: the Complaint and its Exhibit 1, Affidavit of Mary Clement, Director of Division of Consumer Affairs, Exhibit 2: Summary Chart of Payton Abernathy's multiple envelope stuffing scheme names, addresses given to consumer victims to send money or to further inquire; Exhibit 3: Affidavit of Heather Ramos, custodian of Sprint records; Chart Summaries of Consumer Complaints received (Collective Exhibit 1 to Motion); Affidavit of Jeanie Hoskins, formerly, the Director of the Better Business Bureau (Exhibit 2 to Motion); Affidavit of Mary Clement, Director of the Division of Consumer Affairs for the State of Tennessee (Exhibit 1 to Complaint); Affidavits of consumers Shirla Ghadaki, Mamie L. Ellis, Alice Obosu, Denise Deal, Angela Kuscsik and Nancy Mills (Collective Exhibit 3 to Motion); Affidavit of consumer Mary Catlett (Exhibit 5 to Motion); Affidavit of consumer Jennifer Jones (Exhibit 6 to Motion); Copies of Defendants' Internet web site ads (Exhibit 6 to Complaint); Affidavits of Suzanne Linden, State of Tennessee paralegal, (Exhibits 8 and 10 to Motion) and the memorandum of law filed contemporaneously. The proposed Order is attached to this motion.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.

Respectfully submitted,

STATE OF TENNESSEE

ROBERT E. COOPER, JR., B.P.R. 10934  
Attorney General & Reporter



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#### NOTICE OF HEARING

**PLEASE TAKE NOTICE:** This motion shall be heard before Chancellor \_\_\_\_\_  
\_\_\_\_\_ of the Sixth Judicial District, at \_\_\_\_\_ o'clock \_\_\_\_ m., on the  
\_\_\_\_\_ day of \_\_\_\_\_ at the City-County  
Building, 400 Main Avenue, Knoxville, TN 37902-2405.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document is to be served, pursuant to the Tenn.R.Civ.P., by the Knox County Sheriff's Office upon Payton Abernathy, 855 Paxton Drive, Knoxville, TN 37918; Peyton Enterprises, Global Mail Marketing, Make Money Stuffing, PC Enterprises, American Mail Marketing, Freedom Marketing, [www.mailingprogram.com](http://www.mailingprogram.com), also at the address of 855 Paxton Drive, Knoxville, TN 37918

and

Kevin Sparks  
9816 Colby Station Lane  
Knoxville, TN 37922-4249

on this the 3<sup>rd</sup> day of April, 2007.



MEREDITH DEVAULT  
Senior Counsel